



Office of the Attorney General
Washington, D. C. 20530

US REGISTRY
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EO 12036

PROCEDURES FOR REPORTING FEDERAL CRIMES
BY NON-EMPLOYEES UNDER E.O. 12036 § 1-706

Section 1-706 of Executive Order 12036 requires senior officials of the intelligence community to:

Report to the Attorney General evidence of possible violations of federal criminal law by an employee of their department or agency, and report to the Attorney General evidence of possible violations by other persons of those federal criminal laws specified in guidelines adopted by the Attorney General.

These guidelines specify the violations of federal criminal statutes by non-employees which must be reported and provide reporting procedures.

A. Definitions

1. "Agency" shall mean:

- a. The Central Intelligence Agency;
- b. the National Security Agency;
- c. the Defense Intelligence Agency;
- d. offices within DoD for the Collection of specialized national foreign intelligence through reconnaissance programs;

- e. the intelligence elements of the military services, including the Army Intelligence and Security Command (INSCOM), the Counter-intelligence Directorate of the Air Force Office of Special Investigations, and the Internal Security Division of the Naval Investigative Service;
 - f. the Bureau of Intelligence and Research of the Department of State;
 - g. the Intelligence elements of the Federal Bureau of Investigation; and
 - h. the staff elements of the Office of the Director of Central Intelligence.
- 2. "Employee" shall mean an employee as defined in E.O. 12036, § 4-204.
 - 3. "Reportable offense" shall mean a possible violation of the federal criminal statutes listed in part C of these procedures.
 - 4. "Subject" shall mean a person, other than an employee of the agency, about whom an agency has, in the course of performing its lawful functions, acquired information that he is committing or has committed a reportable offense.

B. Policy and Interpretation

1. These procedures govern the reporting of information of which the agency or its employees become aware in the course of performing their lawful functions. They do not authorize an agency to conduct any investigation or to collect any information not otherwise authorized by law.

2. These procedures require an employee of an agency in the intelligence community to report to the general counsel of his department or agency facts or circumstances that appear to the employee to indicate that a criminal offense has been committed. Reports to the Department of Justice will be made by the general counsel of the department or agency or his delegate only as set forth below.

C. Reportable Offenses

Information or allegations showing that the following federal offenses may have been committed shall be reported:

1. Crimes involving intentional infliction or threat of death or serious physical harm. Pertinent federal offenses include:

Assault -- 18 U.S.C. §§ 111-113(a)

Homicide -- 18 U.S.S. §§ 1111-14, 1116, 2113(e)

Kidnapping -- 18 U.S.C. § 1201

Congressional assassination, assault or kidnapping -- 18 U.S.C. § 1751

Threatening the President -- 18 U.S.C. § 871

2. Crimes that impact on the national security, defense or foreign relations of the United States. Pertinent federal offenses include:

Communicating classified information -- 50 U.S.C. § 783(b)

Espionage -- 18 U.S.C. §§ 793-98
Sabotage -- 18 U.S.C. §§ 2151-57

Arms Export Control Act -- 22 U.S.C. § 2778

Export Control Act -- 50 U.S.C. § 2405

Neutrality offenses -- 18 U.S.C. §§ 956-60

Trading with the Enemy Act -- 50 App. U.S.C.
§§ 5 (b), 16

Acting as an unregistered foreign agent -- 18 U.S.C.
§ 951

Communicating classified information -- 50 U.S.C.
§ 783(b)

Government employee acting for a foreign principal --
18 U.S.C. § 219

Communicating restricted data -- 42 U.S.C.
§ 2274-77

Espionage -- 18 U.S.C. §§ 793-98

Failure to register as foreign espionage
trainee -- 50 U.S.C. §§ 851-55

Foreign Agents Registration Act -- 22 U.S.C.
§ 618(a)

Sabotage -- 18 U.S.C. §§ 2151-57

Unlawfully entering the United States -- 8 U.S.C.
§ 1325

The general counsel of the agency, by agreement with the Criminal Division, may develop categories of specific crimes which need not be reported because that particular category could have no significant impact on national security, defense or foreign relations.

3. Any crime meeting any of the following criteria:

a. The crime is committed in circumstances likely to have a substantial impact on the national

security or foreign relations of the United States or
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is intended to conceal activities having such an impact.

b. The crime involves foreign interference with the integrity of United States governmental institutions or processes. Such crimes include, when committed by foreign persons:

Bribery of public officials and witnesses -- 18 U.S.C. §§ 201-208

Conspiracy to injure or impede an officer -- 18 U.S.C. § 371

Election contributions and expenditures -- 2 U.S.C. §§ 441a-j, 599-600

c. There are indications that the crime is committed by or on behalf of a foreign power or in connection with international terrorist activity.

Such crimes include:

Aircraft piracy -- 49 U.S.C. § 1472(i)

Distribution, possession, and use of explosives -- 18 U.S.C. §§ 842(a)-(i)

Unlawful electronic surveillance -- 18 U.S.C. §§ 2511(1), 2512(1), 50 U.S.C. § 1809

Passport and visa offenses -- 18 U.S.C. §§ 1541-44, 1546

Distribution, possession, transfer, and use of use of firearms -- 18 U.S.C. § 922, 924; 26 U.S.C. § 5861

Transporting explosives on board aircraft -- 49 U.S.C. § 1472(h)

Conspiracy to injure or impede an officer -- 18 U.S.C. § 372

Counterfeiting U.S. obligations -- 18 U.S.C. § 471-74

False statements and false official papers -- 18 U.S.C. §§ 1001-02, 1017-18

Obstruction of justice -- 18 U.S.C. §§ 1503-06,
1508-10

Perjury -- 18 U.S.C. § 1621-23

4. The general counsel may report any other possible offense when he believes it should be reported to the Attorney General.
5. Any conspiracy to commit a reportable offense shall be reported.
6. The general counsel shall keep records of any matters referred to him which contain information or allegations of a felony in violation of federal law which the general counsel determines is not reportable under these provisions.

D. Reporting Procedures

When information or allegations are received by an agency that a subject has committed or is committing a reportable offense, the agency shall transmit the information or allegations to the Department of Justice in the following manner:

1. In a case where no public disclosure of classified information or intelligence sources and methods would result from further investigation or prosecution, and the security of ongoing intelligence investigations would not be jeopardized thereby, the agency will report the matter to the cognizant office of the Federal Bureau of Investigation, other

appropriate Federal investigative agency, or to the appropriate United States Attorney or his designee for an investigative or prosecutive determination.

2. In a case where further investigation or prosecution would result in the public disclosure of classified information or intelligence sources and methods or would jeopardize the conduct of ongoing intelligence operations, a letter explaining the facts of the matter in detail will be forwarded to the Criminal Division. The agency will also forward to the Criminal Division a separate classified memorandum explaining the security or operational problems which would arise from a criminal investigation or prosecution, including, but not limited to:

- a. Public disclosure of information needed to prove the offense or to obtain a search warrant or an electronic surveillance order under chapter 119 of Title 18, United States Code;
- b. disclosure required by a defense request for discovery of information under Rule 16 of the Federal Rules of Criminal Procedure, 18 U.S.C. § 3500, or Brady v. Maryland, 373 U.S. 83 (1963); and

- c. interference with the voluntary provision by the subject or persons associated with the subject of cover or other services necessary for intelligence operations.

The Criminal Division, after necessary consultation with the agency, will determine whether to further investigate or prosecute. The agency will be informed of such determination in writing.

- E. If the subject of a referral is an employee of another agency other than a person subject to the Uniform Code of Military Justice, the Criminal Division may refer the matter to that agency for preliminary investigation and possible administrative action. The employing agency will report the results of any such preliminary investigation under the procedures for reporting possible crimes by agency employees.
- F. If the subject of the referral is a person subject to the Uniform Code of Military Justice, the Criminal Division will coordinate the handling of the matter with the appropriate military service in accordance with existing agreements between the Departments of Justice and Defense.
- G. All referrals required by these proceedings shall be in writing and in such detail as the Department of Justice component receiving the referral shall determine.
- H. When the head of an agency believes that circumstances of

security warrant it, he may directly report to the Attorney General in writing any matter required to be reported by these procedures in lieu of following the procedures of paragraphs D-G.

- I. Nothing in these procedures shall be construed to restrict the exchange of information among agencies in the intelligence community required by other procedures or agreements made under E.O. 12036.

8/15/79

Dated:

Griffin B. Bell

Griffin B. Bell
Attorney General